

**CONSOLIDATION OF ARBITRATION ACT**  
R.S.N.W.T. 1988,c.A-5

*(Current to: March 4, 2012)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**  
S.N.W.T. 1995,c.11

**AS AMENDED BY NUNAVUT STATUTES:**  
S.Nu. 2010,c.4,s.4  
s.4 in force March 23, 2010

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A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

Territorial Printer  
Legislation Division  
Department of Justice  
Government of Nunavut  
P.O. Box 1000, Station 550  
Iqaluit, NU X0A 0H0

Tel.: (867) 975-6305  
Fax: (867) 975-6189  
Email: [Territorial.Printer@gov.nu.ca](mailto:Territorial.Printer@gov.nu.ca)

## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the Revised Statutes of the Northwest Territories, 1988.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## ARBITRATION ACT

### INTERPRETATION

#### Definitions

**1.** In this Act,

"arbitrator" includes an umpire and a referee in the nature of an arbitrator; (*arbitre*)

"award" includes umpirage and a certificate in the nature of an award; (*sentence*)

"judge" means a judge of the Nunavut Court of Justice; (*judge*)

"submission" means a written agreement to submit differences to arbitration, whether or not an arbitrator is named in the agreement. (*compromis*)

S.Nu. 2010,c.4,s.4.

### APPLICATION

#### Application to submissions

**2.** This Act applies to submissions made before, on or after August 1, 1956.

#### Application to arbitrations under other Acts

**3.** This Act applies to every arbitration under any Act whenever enacted as if the arbitration were pursuant to a submission, except insofar as this Act is inconsistent with the Act regulating the arbitration or with rules or procedure authorized or recognized by that Act.

### SUBMISSIONS

#### Irrevocable nature of submission

**4.** (1) Unless a contrary intention is expressed in a submission or a judge allows a submission to be revoked, a submission is irrevocable and has the same effect as if it had been made an order of a judge.

#### Effect of death of party

(2) A submission is not revoked by the death of the parties to it or either of them.

#### Where single arbitrator

**5.** Where no other mode of reference is provided in a submission, the reference shall be to a single arbitrator.

#### Umpire

**6.** Where the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

Where arbitrator does not act

**7.** (1) Where an arbitrator refuses to act or is incapable of acting or dies, the party by whom the arbitrator was appointed may appoint an arbitrator in his or her stead, and this power may be exercised as vacancies occur.

Where umpire does not act

(2) Where an umpire refuses to act or is incapable of acting or dies, the arbitrators by whom the umpire was appointed may appoint an umpire in his or her stead, and this power may be exercised as vacancies occur.

Where umpire to act

**8.** The umpire may without delay enter on the reference instead of the arbitrators where the arbitrators

- (a) have allowed their time or extended time to expire without making an award; or
- (b) have delivered to any party to the submission or to the umpire a notice, in writing, stating that they cannot agree.

Removal for misconduct

**9.** A judge may remove the arbitrator or umpire and may appoint an arbitrator or umpire in his or her stead where the judge is satisfied on evidence submitted to the judge by a party to the submission that an arbitrator or umpire has misconducted himself or herself in the arbitration.

## STAY OF PROCEEDINGS

Stay of proceedings

**10.** (1) Where a party to a submission or a person claiming through or under that party commences legal proceedings against any other party to the submission or any person claiming through or under that other party in respect of a matter agreed to be referred, a party to those proceedings may apply to a judge for a stay of proceedings

- (a) after service of a statement of claim on him or her; and
- (b) before he or she takes any step in the proceedings.

Order

(2) A judge to whom an application is made under subsection (1) may make an order staying the legal proceedings referred to in subsection (1) if satisfied

- (a) that there is no sufficient reason why the matter should not be referred in accordance with the submission; and
- (b) that the applicant was ready and willing to do all things necessary to the proper conduct of the arbitration at the time when the proceedings were commenced and still remains ready and willing to do so.

## ARBITRATOR AND UMPIRE

### Service of notice

#### **11.** (1) Where

- (a) a submission provides that the reference is to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator,
- (b) an arbitrator or an umpire is to be appointed by a person and that person does not make the appointment, or
- (c) an arbitrator or umpire refuses to act or is incapable of acting or dies and the person having the right to appoint a person to fill the vacancy has not made the appointment,

a party may serve the other party or the arbitrators or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator or umpire.

### Appointment of arbitrator or umpire by judge

(2) Where an appointment is not made within seven clear days after the service of the notice referred to in subsection (1), a judge may, on application by the person who gave notice, appoint an arbitrator or umpire.

### Powers of arbitrator or umpire where appointed by judge

(3) An arbitrator or umpire appointed under subsection (2) has the same powers to act in the reference and to make an award as if he or she had been appointed by consent of all parties.

### Powers of arbitrators and umpires

**12.** (1) Unless a submission expresses a contrary intention, an arbitrator or umpire acting under the submission may

- (a) administer oaths to the parties and witnesses;
- (b) state an award as to the whole or any part of the award in the form of a special case for the opinion of a judge; and
- (c) correct in an award any clerical error or error made accidentally or arising from an omission.

### Questions of law

(2) An arbitrator or umpire may at any stage of the proceedings and shall, if so directed by a judge, state in the form of a special case for the opinion of a judge any question of law arising in the course of the reference.

## WITNESSES AND EVIDENCE

### Application of *Evidence Act*

**13.** All provisions of the *Evidence Act* that are not inconsistent with this Act apply to proceedings under this Act.



#### Compulsory attendance of witnesses

**14.** A party to a submission may obtain a subpoena or other notice under the Rules of the Nunavut Court of Justice to compel the attendance of a witness but no person is compelled to produce a document that he or she would not have to produce on a trial of an action. S.Nu. 2010,c.4,s.4.

#### Evidence *de bene esse*

**15.** (1) Where a party to a submission wishes to procure for use on the reference the evidence of a person to be taken *de bene esse* or to be taken out of the Nunavut, an order may be made for the examination of that person or for the issue of a commission in the same circumstances and with the same effect as a similar order made in an action.

#### Procedure

(2) The *Judicature Act* and the Rules of the Nunavut Court of Justice apply to an order or commission under subsection (1) and to the proceedings on them and the evidence taken under them. S.Nu. 2010,c.4,s.4.

#### Duty of parties

**16.** A party to a reference or a person claiming under that party shall, subject to any legal objection, submit to be examined by an arbitrator or umpire on oath in relation to the matters in dispute and shall, subject to any legal objection,

- (a) produce before the arbitrator or umpire all books, deeds, papers, goods, documents and things in his or her possession or power that are required or called for; and
- (b) do all other things that during the proceedings on the reference the arbitrator or umpire requires.

#### Oath

**17.** Witnesses on a reference shall be examined on oath.

#### Evidence of prisoners

**18.** A judge may order a sheriff, jailer or other officer who has the custody of a prisoner to produce the prisoner for examination before an arbitrator or an umpire.

#### Copies

**19.** An arbitrator or an umpire, where no special reason appears to him or her to exist for filing an original book, paper or document as an exhibit, may allow a copy of the whole or of the portion of it that he or she considers material to be substituted as an exhibit in the place of the original book, paper or document.

## AWARDS

#### When arbitrator to make award

**20.** An arbitrator shall make his or her award in writing

- (a) within three months after entering on the reference;

- (b) within three months after having been called on to act by notice in writing from a party to the submission; or
- (c) on or before a date later than that mentioned in paragraphs (a) and (b) to which all the parties to the submission, by a writing signed by them, may from time to time increase the time for making the award.

#### When umpire to make award

**21.** An umpire shall make his or her award within one month after the original or extended time appointed for making the award of the arbitrators has expired or on or before any later date to which the persons who appointed the umpire, by a writing signed by them, may from time to time increase the time for making his or her award.

#### Extension by judge

**22.** On application made to a judge by an arbitrator or umpire, the time for making an award may, from time to time, be increased by the judge whether or not the time for making the award has expired.

#### Remitting award

**23.** (1) Where, on an application by a party to a submission, a judge is satisfied that a reference requires further consideration by an arbitrator or an umpire, the judge may remit any or all of the matters referred to the arbitrator or the umpire for further consideration.

#### Time for making award

(2) Unless the judge otherwise directs, where a reference is remitted to an arbitrator or an umpire under subsection (1), the arbitrator or the umpire shall make the award within three months after the date of the remission.

#### Delivery of award

**24.** An award shall be delivered to any of the parties to the submission requiring the award and the personal representatives of a deceased party may require delivery of the award.

#### Enforcement of award

**25.** An award may, by leave of a judge, be enforced in the same manner as a judgment or an order to the same effect.

## APPEALS

#### Nature of award

**26.** Subject to sections 27 and 28, an award made by an arbitrator or by a majority of arbitrators or by an umpire is final and binding on all the parties to the reference and the persons claiming under them.

Where submission allows an appeal

**27.** (1) Where it is agreed by the terms of a submission that there may be an appeal from the award, the reference shall be conducted and an appeal lies to a judge within the time stated in the submission or, if no time is stated, within six weeks after the delivery of the award to the appellant.

Evidence

(2) The evidence of the witnesses examined on the reference shall be taken down in writing and shall, at the request of either party, be transmitted by the arbitrator or the umpire, as the case may be, together with the exhibits, to the judge.

Statement by arbitrator or umpire

(3) Where the award of an arbitrator or an umpire is based wholly or partly on

- (a) his or her physical examination of property, or
- (b) special knowledge or skill possessed by him or her,

the arbitrator or umpire shall transmit to the judge a written statement of that physical examination, special knowledge or skill that will enable the judge to form an opinion of the weight that should be attached to the physical examination performed by the arbitrator or umpire or to the special knowledge or skill of the arbitrator or umpire in reaching the award.

Setting aside award

**28.** (1) Whether or not a submission provides for an appeal from an award, a party to a submission or a person claiming under that party may apply to a judge to set aside an award on the grounds that

- (a) an arbitrator or umpire has misconducted himself or herself, or
- (b) an arbitration or an award has been improperly procured,

and the judge may, in the discretion of the judge, dismiss the application or set aside the award.

Production of exhibits

(2) On an application under subsection (1), a party may by notice require any other party to produce, and the party so required shall produce, on the hearing of the application, any original book, paper or document in his or her possession that has been used as an exhibit or given in evidence on the reference and that has not been filed with the deposition supporting the application.

Time for appeal

**29.** Unless by leave of a judge, application to set aside an award, other than by way of appeal, shall not be made after six weeks from the delivery of the award to the applicant.

Costs of appeal

**30.** Where an appeal from an award is allowed or an award is set aside, the judge who allowed the appeal or set aside the award may give directions as to the costs of the appeal or of the application to set aside the award and the costs of the reference and award.

## COSTS

### Costs of reference and award

**31.** The costs of a reference and award are in the discretion of the arbitrator or umpire who may direct to and by whom and in what manner the costs or any part of the costs shall be paid.

### Order as to costs

**32.** A judge may make an order under this Act on such terms as to costs or otherwise as the judge thinks just.

## FEEES

### Fees fixed by agreement

**33.** Where an arbitrator or umpire takes on a reference and award in respect of which a submission or other agreement between the parties to the submission has, to his or her knowledge, set out his or her fees for each day's attendance or a gross sum for the entire reference, the fees or sum set out are substituted for the fees to which he or she would otherwise be entitled under the tariff referred to in subsection 41(2).

### Fees specified by the rules

**34.** Subject to section 33, an arbitrator or umpire is entitled to, but is not entitled to more than, the applicable fees specified by the tariff referred to in subsection 41(2) in respect of his or her attendances and services.

### Limit of witness fees

**35.** No greater fees are taxable in respect of a person called as a witness before an arbitrator than would be taxed in an action.

### Where no business done at meeting

**36.** (1) Where, at an arbitration meeting in respect of which due notice has been given, no proceedings are taken as a result of

- (a) the absence of any party to the submission, or
- (b) a postponement at the request of any party,

the arbitrator shall make up an account of the costs of the meeting, including the proper charges for his or her own attendance and that of any witnesses and of the counsel or solicitor of the party present who does not desire the postponement, and, unless the arbitrator considers that it would be unjust to do so, the arbitrator shall charge the amount of the costs against the party in default or at whose request the postponement is made.

### Payment of costs

(2) The party in default or who has requested a postponement shall, where an amount is charged against him or her under subsection (1), pay that amount to the other party, whatever may be the event of the reference, and the arbitrator shall, in the award, make any direction necessary for that purpose and the amount charged may be set off against and deducted from any amount awarded in his or her favour.

#### Taxation of costs

**37.** A party to an arbitration is entitled to have the costs of the arbitration, including the fees of the arbitrator or, if the party wishes, the arbitrator's fees alone, taxed by the Clerk of the Nunavut Court of Justice on an appointment, which may be given by the Clerk for that purpose. S.Nu. 2010,c.4,s.4.

#### Penalty for excessive fees

**38.** (1) An arbitrator who, having entered on a reference,

- (a) refuses or delays after the expiration of one month from the publication of the award to deliver the award until a larger sum is paid to the arbitrator for his or her fees than is permitted under this Act, or
- (b) receives for his or her award or for his or her fees as an arbitrator a larger sum than is permitted under this Act,

shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator the larger sum in order to obtain the award or as a consideration for having obtained it, an amount three times the excess demanded or received by the arbitrator contrary to this Act.

#### Procedure

(2) The penalty referred to in subsection (1) may be recovered by an action before a judge.

#### Action for fees

**39.** Where an award has been made, an arbitrator may maintain an action for his or her fees if the fees have been taxed and, in the absence of an express agreement to the contrary, the arbitrator may maintain that action against all parties to the reference, jointly or severally.

## VALUATORS AND APPRAISERS

#### Appointment of valuator and appraiser

**40.** (1) A judge may appoint a valuator or an appraiser where it is provided by a written agreement that a valuation or an appraisal shall be made by a valuator or an appraiser.

#### Powers of valuator and appraiser

(2) A valuator or appraiser appointed under subsection (1) shall have the same powers to make a valuation or appraisal as if he or she had been appointed by consent of all parties to the agreement.

## RULES

### Rules of practice and procedure

**41.** (1) The Commissioner may make rules of practice and procedure, including tariffs of fees and costs, for the better carrying out of the purposes of this Act and for regulating the practice under this Act, and, until these rules are made, the Rules of the Nunavut Court of Justice apply, with such modifications as the circumstances require, to all causes, matters and proceedings under this Act. S.Nu. 2010,c.4,s.4.

### Tariff of fees

(2) In the rules made under subsection (1), the Commissioner shall establish a tariff of fees covering the matters referred to in sections 33 and 34 and the tariff may make different provision as between persons who are by profession barristers, solicitors, engineers, architects, chartered accountants, certified general accountants or Dominion land surveyors and persons who are not.